

Victim Compensation and Government Claims Board

Proposed Regulations: Title 2, California Code of Regulations, Sections 649.23 – 649.25.

Revised Notice of Proposed Rulemaking

Nature of Public Hearing. The Victim Compensation and Government Claims Board (Board) will conduct a public hearing concerning this proposed rulemaking on April 16, 2003, beginning at 9:00 a.m., at the office of the Board, 630 K Street, first floor hearing room, Sacramento, California. Any interested person or authorized representative may present oral or written statements, arguments or contentions relevant to the rulemaking action described in this notice. The Board may impose reasonable limits on oral presentations. Persons making oral presentations at the hearing are asked to provide their comments in writing at the conclusion of their remarks.

The hearing location is accessible to persons with disabilities. If you need accommodation, including a sign language interpreter, please notify the contact person listed below at least two weeks before the hearing so that an accommodation may be provided.

Submission of Written Comments. Written comments other than those presented at the hearing may be submitted to the Board at the following address by the deadline given below:

Victim Compensation and Government Claims Board
630 K Street, Fifth Floor
P.O. Box 48
Sacramento, CA 95812-0048
Attention: Judith A. Kopec, Senior Staff Counsel

Comments that are no more than ten pages will be accepted by fax at (916) 327-2933. A fax transmission must be completed by the time given below in order to be timely submitted.

Comments may also be submitted electronically to Judith A. Kopec, Senior Staff Counsel at jkopec@voc.ca.gov by the deadline given below.

Comments must be received by 4:00 p.m. on April 16, 2003, in order to be considered by the Board.

Authority Citation. The proposed regulations are authorized by Government Code section 13920(c).

Reference Citation. The proposed regulations implement Government Code sections 13954, 13957(a)(2), 13957.2(a)

Informative Digest: *Summary of Existing Laws and Effect of Proposed Rulemaking.* Existing law provides that the Victim Compensation Program (Program), administered by the Victim Compensation and Government Claims Board (Board), reimburse eligible persons for outpatient psychiatric, psychological or other mental health counseling related expenses that are necessary as a direct result of the qualifying crime. The statutes governing the Program were revised and reorganized, effective January 1, 2003. (Stats. 2002, ch. 1141.) Both the current and new statutes establish a framework for the payment of outpatient mental health counseling related expenses based on whether the person being treated is a victim

Unless dire or exceptional circumstances require more extensive treatment, the Program may reimburse, effective January 1, 2003, up to \$10,000 for outpatient mental health counseling related expenses for a victim, or a derivative victim who is the surviving parent, sibling, child, spouse, fiancé or fiancée of a victim of a crime that directly resulted in the death of the victim. In addition, not more than two specified derivative victims, who are primary caretakers of a minor victim and are fully eligible for reimbursement, may share a total of \$10,000.

Unless dire or exceptional circumstances require more extensive treatment, the Program may reimburse, effective January 1, 2003, up to \$3,000 for mental health counseling related expenses for a derivative victim who is not eligible for up to \$10,000. However, a derivative victim who was not the primary caretaker of a minor victim at the time of the crime shall only be reimbursed if the counseling is necessary for the treatment of the victim. A victim of a specific violation of unlawful sexual intercourse may be limited to up to \$3,000, and a derivative victim of the same violation of unlawful sexual intercourse may not be eligible for reimbursement for mental health counseling expenses.

Existing statutes require the Program to verify the treatment for which reimbursement is requested, the circumstances of the qualifying crime, the amounts paid or received by or for the applicant, and any other pertinent information deemed necessary. Existing law requires that the applicant shall cooperate with Program staff to verify information.

Existing statutes authorize the Board to establish service limitations for reimbursement of mental health counseling services. To ensure service limitations that are uniform and appropriate to the levels of treatment required by the applicant, the Board may review all claims for mental health counseling services to ensure their medical necessity

Existing regulations require an applicant to submit a complete statement of losses and reimbursements directly related to the qualifying crime, including the dates that mental health services were provided, a description of the services, a statement that the services were received and were required as a direct result of the qualifying crime and for no other reason, and whether the mental health counseling was provided in an individual, family or group setting. The provider of mental health services must submit an itemized statement for services, the license number of the professional certificate issued to the mental health

practitioner providing the services, and the provider's business address and phone number.

The proposed regulations provide that specified mental health counseling service limitations shall be deemed to be appropriate to the level of treatment medically necessary unless additional reimbursement is authorized as provided in the proposed regulations. The proposed regulations allow for five initial mental health counseling sessions to be reimbursed and describe the information necessary to authorize additional sessions to be reimbursed. The proposed regulations establish the specific factors that shall be considered when evaluating a request for additional reimbursement.

The proposed regulations provide that a mental health treatment provider who receives payment from or provides services reimbursed by, the Program shall be subject to clinical or fiscal audit, or both.

Informative Digest: *Policy Statement Overview.* The objective of the proposed regulations is to implement service limitations for mental health counseling that are appropriate to the level of treatment medically necessary as a direct result of a qualifying crime in order to provide fiscal stability to the Program.

Informative Digest: *Comparable Federal Statute or Regulations.* The proposed regulations do not differ substantially from an existing comparable federal statute or regulation.

Determination on Imposition of Mandate on Local Agencies or School Districts. The Board has determined that the proposed rulemaking does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed under Part 7 (beginning with section 17500), Division 4, Title 2, of the Government Code.

Fiscal Impact on Local Agencies or School Districts. The proposed rulemaking does not impose a cost to any local agency or school district that is required to be reimbursed under Part 7 (beginning with section 17500), Division 4, Title 2, of the Government Code, or any non-discretionary cost or savings on local agencies.

Fiscal Impact on State Government. The proposed rulemaking is estimated to result in savings of \$1 million to the Restitution Fund in the current State Fiscal Year. The proposed rulemaking does not impose a cost or result in savings in federal funding to the State.

Initial Determination Regarding Economic Impact on Business. The Board has made an initial determination that the proposed rulemaking will not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed rulemaking will not have a significant adverse economic impact on businesses because it does not directly affect any business in California.

Businesses are not required to comply with or enforce the proposed rulemaking, and will not derive a benefit or suffer a detriment from its enforcement.

Cost Impact on Representative Person or Business. The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed rulemaking.

Assessment of Effect on Jobs and Businesses. The Board has determined that the proposed rulemaking will not significantly affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently doing business in California.

Initial Determination Regarding Impact on Housing Costs. The Board has determined that the proposed rulemaking will not have a significant effect on housing costs.

Determination Regarding Effect on Small Business. The Board has determined that the proposed rulemaking does not affect small business. Small businesses are not legally required to comply with or enforce the proposed rulemaking, and will not derive a benefit or incur a detriment from its enforcement.

Consideration of Alternatives. The Board must determine that no reasonable alternative considered by the Board or otherwise identified and brought to the Board's attention would be effective in carrying out the purpose for which the rulemaking is proposed or would be as effective and less burdensome to affected private persons than the proposed rulemaking.

Agency Representative and Designate Backup Contact Person.
Inquiries concerning this rulemaking action may be directed to:

Judith A. Kopec, Senior Staff Counsel
Victim Compensation and Government Claims Board
630 K Street, 5th Floor
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 327-1998
Fax: (916) 327-2933
E-mail: jkopec@voc.ca.gov

The designated backup person to whom inquiries may be directed in Ms. Kopec's absence is:

Melissa Turben, Legal Secretary
Victim Compensation and Government Claims Board
630 K Street, 5th Floor
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 327-1998
Fax: (916) 327-2933
E-mail: mturben@voc.ca.gov

Availability of Statement of Reasons and Text of Proposed Amended Regulation. The Board has prepared an initial statement of reasons for the proposed rulemaking, and has available all the information upon which the proposed rulemaking is based and the text of the proposed regulations, which are available for public review. Copies of the initial statement of reasons and the text of the proposed regulations may be requested from the designated backup contact person identified above.

Availability of Modified Regulation. After the public comment period and public hearing, the Board may adopt the proposed regulations substantially as proposed. If substantive modifications that are sufficiently related to the original proposed regulations are made, the modified text will be made available at least 15 days before the Board adopts, amends, or repeals the resulting regulations.

Availability of Final Statement of Reasons. After the conclusion of the hearing and public comment period, the Board will prepare a final statement of reasons for this proposed rulemaking. Copies of the final statement of reasons may be obtained from the designated backup contact person identified above.

Accessing Rulemaking Materials through Internet Web Site. Documents pertaining to the proposed rulemaking can be accessed through the Board's internet web site. To do so, go to www.voc.ca.gov, then scroll to the "Featured Content" section, then to the "Legislation, Regulations, Rules and Precedent Decisions" section, then click on "Regulations," then click on "VCP Rulemaking 2003," click on "Mental Health Limitations" and select the document that you wish to view.